



Greater Hartford Legal Aid

Committee on Government Administration and Elections, February 22, 2016
Testimony submitted by Lucy Potter, Attorney, Greater Hartford Legal Aid

S.B. 16, "AN ACT INCREASING AGENCY EFFICIENCY IN THE REGULATION PROCESS" *Position: oppose*

My name is Lucy Potter, and I am an attorney with Greater Hartford Legal Aid (GHLA). I am submitting this testimony on behalf of GHLA in opposition to Governor's Bill S.B. 16, "An Act Increasing Agency Efficiency in the Regulation Process." GHLA believes that this bill undermines transparency in government.

Agency regulations have far-reaching implications for Legal Services clients in many areas, including Food Stamps, State-Administered General Assistance (SAGA), the Rental Assistance Program, HUSKY, and Unemployment Insurance. Legal Services attorneys know that the existence of regulations, and their precise wording, can be very consequential for our clients.

When the legislature passes a statute that directs an agency to enact regulations, it essentially empowers the executive branch to take on a legislative function. The regulations review process, allowing public comment and ultimate review by the General Assembly's Regulations Review Committee, is the necessary check on this delegation of authority. It ensures that this authority is exercised as the legislature intends. GHLA often submits comments during public comment periods, and sometimes testifies before the General Assembly's Regulations Review Committee. For example, this past December we met with Regulations Review to oppose some changes DSS made to the regulations for the SAGA cash program. One consequential change, which Regulations Review altered, with our input, was the time period for processing SAGA cash applications. This is significant because SAGA cash applicants must be destitute to qualify, and so face real hardship from waiting for their applications to be processed. In the course of that review a compromise was reached, shortening the time period DSS had proposed. In our experience, the ability to comment on regulations sometimes helps to avoid problems that could lead to litigation.

-Section 1 (c)(2) of S.B. 16 would amend Conn. Gen. Stat. § 4-168 (c)(2) to permit agency heads to "opt out" of passing regulations, even if a statute requires an agency to enact regulations. One might imagine a situation where a statute proposed such a clear-cut change that regulations might not be necessary. But if the legislature determines that regulations are required, why should an agency head countermand this determination? And how would the agency implement a change without regulations. The disturbing trend that we have seen is that agency "policy" is articulated in alternative formats, such as training materials or policy manuals. These can be

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regulations in all but name, and should therefore be subject to the regulations review process. Instead of regulations subject to notice-and-comment, agencies instead might act based on hidden criteria for decision-making—unknown to the public and largely unreviewable by courts.

-Sec. 2 of S.B. 16 would amend Conn. Gen. Stat. § 4-168 (h) to eliminate the public comment period on regulations in several circumstances, including when a regulation is changed as directed by a public act. Although it might seem at first that there is little reason to subject technical changes to public comment, agencies and members of the public sometimes disagree about which changes are technical, or required by statute.

S.B. 16 would reduce transparency and shift power to the discretion of agency heads. Because of the importance of the regulatory process in Connecticut in so many critical areas, GHLA opposes this bill.